



## Status Report on Activities to Uphold Tribal Treaty Rights

Prepared by USDA Natural Resources Conservation Service, Washington

### **NRCS Programs Target Salmon and Shellfish Habitat Improvement**

NRCS provides technical and financial assistance to private landowners and operators for the conservation of natural resources on agricultural lands, private, non-industrial forest lands, and tribal lands. Since 2010, in addition to using regularly allocated funding, NRCS Washington has requested additional program funds specifically to improve habitat for salmon and shellfish. The 2014 Farm Bill requires that five percent of Environmental Quality Incentives Program (EQIP) funds be set aside for wildlife. Historically, NRCS-WA has exceeded this requirement.

In addition, NRCS-WA identified inadequate habitat for fish and wildlife as a priority natural resource concern through the state resource assessment (SRA) and the tribal resource assessment (TRA). Natural resources including soil, water, air, plants and animals create the ecosystems on which wildlife depend. Private landowners/operators and tribes who participate in NRCS programs will receive a higher ranking when treating one or more of the concerns identified in the SRA.

NRCS structures financial assistance program applicant ranking criteria to give priority to landowners/operators and tribes who are willing to implement the highest levels of stewardship and conservation. Applicants who treat multiple resource concerns rank ahead of those who treat a single resource concern or volunteer to implement a single conservation practice. Landowner objectives and economic considerations must also be examined when entering into conservation contracts. NRCS has established separate funding pools of up to 10% of our allocation for historically underserved applicants.

Fish and wildlife habitat was also identified as a priority resource concern in the new Regional Conservation Partnership Program (RCPP), which leverages federal investment in natural resources conservation with private, state, and tribal funding. Several RCPP project proposals from partners have identified fish habitat work as a primary objective.

In 2012, under the Puget Sound Salmon Recovery Partnership initiative, NRCS, along with partners, funded twenty projects across Puget Sound to address salmon recovery objectives. Using EQIP funding, NRCS obligated \$1,972,955, which, when implemented will result in:

- ☐ 19 miles of stream habitat opened by removing fish passage barriers (\$945,332);
- ☐ 17.8 acres of buffers established (\$551,432); and
- ☐ 2 waste storage ponds decommissioned (\$476,191)

In 2013, NRCS offered \$2 million in technical and financial assistance to landowners in the Puget Sound through PSHIP to improve salmon habitat and water quality. The waste storage structure decommissioning component was removed from the program and funding was focused on the following practices:

- ☐ Riparian Herbaceous Cover
- ☐ Riparian Forest Buffer



- ☐ Stream Habitat Improvement
- ☐ Aquatic Organism Passage
- ☐ Restoration and Management of Declining Habitats
- ☐ Wetland Wildlife Habitat Management

In an effort to tailor this program to meet the requests of the tribes, NRCS piloted a sign-up which required landowners to agree to implement buffers in accordance with the NOAA buffer guidance. NRCS received five applications, all from land trust organizations except one tribal application. About 36% of the funding was obligated into contracts. An additional contract was awarded that will improve salmon habitat by restoring native Olympia oysters. Because this was on tidal lands, no buffer requirement applied.

As a result of the low participation in the pilot, NRCS offered another sign-up without the required buffer provision and expanded the area of consideration to include the Puget Sound and the Pacific Coast. Eleven contracts were awarded, including two with tribes, bringing obligation totals to nearly \$2 million. Eligible practices for both the PSHIP Pilot and PSHIP 2013 were limited to support activities which directly improved in-stream habitat (fish passage, large wood placement, channel restoration, floodplain restoration, etc.), nearshore substrate, and riparian buffers.

Once implemented, the conservation practices in these contracts will:

- ☐ Open up 19.3 miles of upstream habitat with 9 fish passage projects (\$1,077,318)
- ☐ Establish about 50 acres of new buffers, while nearly 64 acres of existing buffers will be enhanced.

In 2013, NRCS offered financial assistance to shellfish growers for the first time in Washington State. The agency obligated nearly \$77,000 in contracts with five producers, including three tribes, in Mason, Pacific, Thurston, and Whatcom counties. These contracts provided technical and financial assistance to collect the predatory Japanese oyster drill and egg cases, and monitoring eradication success.

After a decision from the national office, NRCS is currently unable to provide contract support for oyster drills. NRCS is investigating additional aquaculture resource concerns that might be eligible for NRCS programs.

NRCS requested an additional \$3 million for 2014 to continue its efforts to protect salmon habitat but did not receive the funds.

As a result of running the PSHIP Pilot using the NOAA buffer table and subsequent policy evaluations made by NRCS technical experts in Washington, DC, the following determinations have been made:

- ☐ NRCS cannot pre-condition funds in its voluntary conservation programs due to lack of regulatory authority. Program participants voluntarily agree to implement conservation practices and there are no provisions in NRCS statutes or policies to require them to implement any of NRCS programs or to implement specific conservation practices as a condition for participating in those programs.
- ☐ Nationally, NRCS asked NRCS- WA to reinstate the 2009 Washington Biological Technical Note 14 (Wildlife Habitat Evaluation Guide) while the national office reviews the updated 2013 Washington Biological Technical Note 14's science-based guidance pertinent to fish habitat.



- NRCS cannot enter into contracts with private landowners that require implementation of conservation practices using practice standards, specifications, or guidance (including Technical Notes) other than that which appear in the Field Office Technical Guide (FOTG). The FOTG contains the primary scientific references for NRCS and technical information about the conservation of soil, water, air, and related plant and animal resources. The primary conservation practices in the FOTG that involve buffers when used to address fish habitat have been compared to the NOAA buffer guidance and there are no significant differences.

### NRCS Buffer Guidance

NRCS has many conservation practices in its tool box to address habitat and water quality resources. Although the riparian forest buffer is the foremost discussed conservation buffer practice, there are many types of buffers that are available to treat specific conditions, including soil erosion (sediment), prevention of run off of pathogens and nutrients, temperature, and aquatic habitat. These conservation practice buffer standards include grass, shrub, and/or tree plantings. The appropriate buffer is recommended by trained NRCS conservation planners after completion of the conservation planning process, which includes an inventory of the natural resources, assessment of the conditions, evaluation of alternatives to address the resource concerns, and landowner objectives.

NRCS conservation planners use *Biology Technical Notice 14 that references: Conservation Buffers Design Guidelines for Buffers, Corridors, and Greenways*, developed by the US Department of Agriculture Forest Service Southern Research Station in September of 2008, and the Washington Department of Fish and Wildlife 1997 Riparian Management recommendations for Washington's priority habitats. Riparian Buffers will vary depending on resource concern of water quality or aquatic habitat, stream type and stream size. The guidance contains buffer width recommendations for aquatic habitat functions ranging from 35 to 100 feet for water temperature and 75 to 150 feet for aquatic species diversity. For degraded aquatic habitat in medium streams, at least 75% of the reach must have at least a 100 foot wide buffer of appropriate vegetation (minimum, not average) to meet planning criteria. When impediments to implementing the full width of the recommended buffer, like a barn or a road, NRCS requires that at least 75 percent of the length of the buffer must meet design width.

A wildlife corridor can be split on either side of a stream, with 50 feet on either side (or some other ratio) to benefit terrestrial species moving between high quality habitat patches. Buffer widths are aligned with the "Ag, Fish, Water Table" provided to NRCS by Swinomish Tribe (aka "NMFS buffer table"). Additionally, the National Technical Note: Stream Visual Assessment Protocol 2.0 (SVAP II) was merged into Washington Biology Technical Note 14 to evaluate the condition of aquatic ecosystems associated with streams. The guidance is interpreted and incorporated into conservation plans by NRCS technical staff.

In 2014, NRCS-WA implemented policy that from 2014 and further on, every contract NRCS awards will have the Biology Technical Note 14 used to assess wildlife resource concerns on the "planning unit" and it will become supplemental documentation to an Environmental Evaluation (EE) which is required under the National Environmental Policy Act (NEPA.)

On May 2, 2014, NRCS attended a Washington Dairy Science Symposium to garner information on water quality and the buffer science available, as well as initiate working relationships. It was well attended by local



producers, agricultural interest groups including Washington Dairy Federation, Conservation Districts, Washington State Conservation Commission, Washington State Department of Ecology, Department of Agriculture, NRCS staff, nutrient management specialists, academia, and many other conservation partners.

Also in May 2014, Wayne Honeycutt, NRCS Deputy Director of Science and Technology, presented to the Washington State Technical Advisory Committee and the Washington Tribal Conservation Advisory Council on the development of conservation practice standards and supporting science. He stressed the importance of comments/concerns and science being submitted during the federal register review process. Shaun McKinney, NRCS West National Technical Support Center Director and National Water Quality Director, Wayne Honeycutt, and Deputy Under Secretary Ann Mills, attended a tour featuring implemented buffers.

NRCS-WA recognizes that some agriculture producers are reluctant to implement riparian forest buffers on their land due to the loss of productive land. Other contributing factors include lack of knowledge on the benefits of buffers. While there are many programs available that have buffers as a component, the incentives and compensation may be inadequate to compel landowners to take these conservation measures.

NRCS entered into a cooperative agreement with the Washington State Conservation Commission to:

- ☐ Inventory existing buffer programs, regardless of funding source
- ☐ Assess and document the various incentives, eligibility requirements, limitations, and regulatory mandates
- ☐ Evaluate barriers to landowner implementation of buffers
- ☐ Provide a gap analysis of incentives that could overcome barriers
- ☐ Provide outreach and education to landowners in targeted counties on their impacts to wildlife (salmon) and water quality and how they could use buffers to help improve these

The information from the assessment and evaluation will be shared with other federal and state agencies in an effort to determine if more can be done to bolster programs and incentives that will result in more buffers on the ground.

### **Conservation Systems Planning**

NRCS has a long tradition of evaluating natural resources and providing recommendations for treatment utilizing Resource Management Systems (RMS) Planning and the Field Office Technical Guide (FOTG) conservation practice standards and specifications.

As Financial Assistance (FA) programs became introduced in past Farm bills, their impacts to the NRCS planning process have been numerous. As interest in NRCS FA programs have increased, NRCS became more focused on single resource concern evaluations and treatment, often neglecting to evaluate and provide treatment alternatives for other resource issues. This focused approach made delivery of financial programs more streamlined and efficient for both the NRCS and participants but was not always in line with the NRCS RMS planning concepts of the past.



Several recommendations are now being implemented to address resource treatment on an individual's entire agricultural operation. Below are three current actions that are being implemented in Washington NRCS.

**Financial Assistance Program Delivery** – All financial assistance applications will be evaluated using the Washington NRCS inventory checklist tool. This will require all resource conditions to be evaluated and compared to planning criteria. Resource concerns that do not meet NRCS planning criteria will be provided alternative treatment systems in order to meet resource planning criteria. Applying these principles to FA program delivery will create an awareness with participants of the overall resource conditions of their planning unit rather than focusing only on the practices or resource treatments applied for.

**Voluntary Natural Resources Conservation Plans** – Washington NRCS will be conducting a Voluntary Natural Resources Conservation Planning sign-up January – March 2015. Applications will be taken from participants that would like to develop an RMS systems plan for their entire operation. These plans will evaluate all resources, and provide treatment alternatives to address all resource issues utilizing the NRCS FOTG. Participants will be able to use the plans to seek further funding opportunities as well as support marketing of their agricultural products.

**Resource Stewardship Planning Pilot** – NRCS Washington is currently participating in a National Resource Stewardship Pilot (RSP). The pilot includes using a new resource evaluation tool(s) to evaluate a participant's farm. The evaluation will provide a snap shot of current stewardship levels of the operation for all resource concerns. The results will determine future eligibility for NRCS programs. Final results of the assessment may indicate a high level of stewardship for all resources, which participants may use as a tool in marketing products produced on the farm in an environmentally sound manner.

### **Stewardship Outreach Group**

A number of factors contribute to increasing pressure on agriculture producers and foresters in Washington to implement higher levels of conservation. There are concomitant pressures on conservation agencies to prioritize investments, target funds, defend decisions, and document outcomes. Some of the contributing factors include government responsibility to uphold tribal treaty rights, reduced funding available for conservation activities, competing resource concerns, increased and tighter regulations, and new species listing under the Endangered Species Act.

In February 2014, the NRCS Washington State Conservationist convened a small group of conservation leaders to discuss how they can collectively protect the viability of agriculture in Washington while promoting the protection and conservation of natural resources. During future meetings the group will:

- ☐ Identify barriers to conservation
- ☐ Discuss methods to overcome the barriers
- ☐ Examine the types of incentives and compensation that are available to producers to undertake conservation
- ☐ Identify potential gaps in the incentives and compensation
- ☐ Brainstorm how to collectively conduct education and outreach to producers



- ☐ Suggest support needed from Washington, DC, state legislature, or elsewhere
- ☐ Set a path forward for developing incentives and messages to move agriculture producers further up the stewardship ladder

Results of these discussions and any proposed actions will be shared when they are completed.

### **Treaty rights responsibilities and NRCS national staff**

This year, several national staff within USDA traveled to Washington to receive briefings on tribal treaty rights and hear perspectives from tribes, agriculture groups, and technical experts.

In May 2014, Deputy Under Secretary (DUS) for Natural Resources and the Environment Ann Mills traveled to Washington State to tour conservation projects and to speak with tribal representatives, partner groups, and farmers who are implementing conservation practices on their land. During the tour, representatives from the Sustainable Fisheries Foundation presented their model for collaborative investment in projects in the Puget Sound. Concepts from their model will be included in the coordinated investment strategy currently under development by tribes and federal agencies.

In August 2014, examiners from the Office of Management and Budget (OMB) representing NRCS and NOAA visited Washington to understand more about tribal treaty rights including tribes' responsibility to co-manage fish habitat. OMB staff saw different types of streams and drainage systems passing through farm land, and implemented conservation practices such as buffers, engineered log jams and woody debris, stream bank improvements, and fish passage barrier correction. In addition, some of the barriers encountered by federal agencies in implementing such projects were discussed.

The discussions and tours increased understanding of national staff and will help them identify funding challenges and internal resources needed to better support tribal treaty rights.

### **Washington Tribal Conservation Advisory Council**

In 2011 NRCS established a tribal program strategy that guides NRCS' work with Tribes and is scheduled for updates every 3 years. This document has been reviewed by the WA Tribal Conservation Advisory Council and comments have been integrated.

As part of this plan, permanent positions were established, including a state tribal liaison, tribal district conservationists on the Yakima and Colville Reservation. NRCS also formed WATCAC in 2010. The WATCAC currently has 20 tribes represented, 6-8 of which participate regularly. The WATCAC is a venue for tribal representatives to provide information, analysis, and recommendations to the NRCS State Conservationist on implementing and establishing priorities and criteria for natural resources conservation activities and programs on tribal lands.



As a result of WATCAC's efforts, in 2014 NRCS obligated \$1,414,183 for conservation projects with tribes in Clallam, Ferry, Grays Harbor, Klickitat, Mason, Okanogan, Pierce, and Yakima counties according to priorities set by the council.

In 2014, members of WATCAC analyzed the structure of the council to determine if they could better meet the needs of the tribes while also providing input to NRCS. In an effort for the WATCAC to be more effective, the participating tribes have requested to have a 2-3 day strategic planning session. This strategic planning session is scheduled for mid-February. The state conservationist is asking 6-7 tribal leaders to identify a tribal council member to form an Executive Policy Committee to the WATCAC. Invitations to selected tribal leaders have been mailed out.

### **NRCS/WACD Tribal Outreach Task Force**

In 2013 the Washington Association of Conservation Districts partnered with NRCS to develop a Tribal Outreach Task force. Membership on this task force includes tribal representatives, conservation district employees and the NRCS state tribal liaison. The goal of the task force is to establish, increase and enhance effective communication; build partnerships to improve collective efforts, to build community locally, and to protect shared natural resources.

For the first time, the WACD annual meeting included a tribal component in 2013. Key note speakers Stan Speaks from BIA, and Craig Bill from the Governor's Office of Tribal Affairs joined Kirk Hanlin, Assistant Chief of NRCS, and Earl Garber, President of the National Association of Conservation Districts in a panel discussion. A breakout session included presentations by tribes highlighting successful projects that might not have been completed without the partnership between tribes, conservation districts, and other partners.

In 2014, Washington Association of District Employees training curriculum included sessions on traditional plants as a potential restoration project. The WACD also sent a letter out to all the tribal chairs and natural resource directors to develop a working relationship to expand on projects with collective goals. A working session was also offered by the Tribal Outreach Task Force. At this very well attended session task force members worked with conservation district staff to identify tools needed to assist conservation district staff when working with tribes.

In the spring of 2015, the WACD Tribal Outreach Task Force is hosting a 2½ day training to conservation district supervisors on Working Effectively with American Indians. Local tribal council members, and elders will be invited to participate and assist in the training. The work that NRCS and the WACD has been doing to increase and improve the working relationships and partnering opportunities with Tribes has sparked interest at the national level with the National Association of Conservation Districts (NACD)

### **NRCS Internal Appraisals and Training**

NRCS has integrated a tribal component into the State Quality Assurance Appraisals that take place each year in a selected area. This year the East Area was appraised. The appraisal found that most field offices are working well with tribes. Several field offices are planning to expand and increase existing outreach to tribes that have lands or might have lands in their area. In addition to the field offices that have readily evident tribal lands and resources in their area, staff in other field offices are encouraged to also consider how potential projects might affect tribal resources.





In February 2014, State Conservationist Roylene Rides at the Door and state Tribal Liaison Robin Slate attended a meeting of the BIA superintendents in Portland, Oregon. Rides at the Door provided an overview of NRCS and then discussed some of the challenges that NRCS programs have when working with Tribes where BIA has jurisdiction. The superintendents present offered to work with NRCS to address some of the jurisdictional issues that tribes face when applying for NRCS contracts.

In March 2014, the NRCS state leadership team and the district conservationists received Working Effectively with American Indians training. In addition, East Area staff learned about the history of the US Government and the Colville Tribe and the construction of the Grand Coulee Dam, the displaced tribal members and the importance of salmon to the tribes. Quarterly tribal training is planned for NRCS leadership team meetings.

In August 2014, John Hollowed, Legal Advisor, Northwest Indian Fisheries Commission (NWIFC), accepted an invitation to provide training to the NRCS state leadership team and the district conservationists. During the training staff learned the background and importance of the treaties, and how court cases throughout the years have upheld treaty rights and expanded on the responsibilities of the tribes, the federal, and state governments to manage for those treaty rights. His presentation also helped all staff better understand the trust responsibility federal agencies have to tribes.

#### **Team USDA at ATNI**

USDA organized a break out session at the Affiliated Tribes of Northwest Indians (ATNI) Annual Conference that featured seven USDA agencies. At this session, Team USDA had meaningful discussions with Tribes about the needs in their community that “Team USDA” might be able to assist with in a more holistic manner.

This “standing room only” session was well received. Tribal representatives requested that similar sessions are offered at each ATNI conference. Because ATNI includes Tribes from several states, NRCS and other USDA agencies are working internally to ensure that the appropriate staff attend the meetings, and that a mechanism is in place for reporting back from the previous session.

The next Team USDA session will be at the ATNI conference in Lincoln City, Oregon in February 2015.

#### **Puget Sound Federal Caucus**

NRCS staff participate in the Puget Sound Federal Caucus and the State Conservationist serves as Co-Chair, with other federal leads from National Marine Fisheries Service and Environmental Protection Agency, for Tribal Treaty Rights at Risk. NRCS has contributed to the development of the dispute resolution process as well as the federal components of the Puget Sound Partnership Action agenda and will be a primary contributor to the Puget Sound Federal Caucus Strategy, *Restore Degraded Habitat*. The Federal Caucus is working with tribes and the Northwest Indian Fisheries Commission to develop a *Coordinated Investment Strategy* that will incorporate the recently issued tribal policy statement. Some of the goals of the strategy are to align priorities, leverage resources, and identify activities that will result in the greatest benefits.





**Farm Service Agency administers the Conservation Reserve Enhancement Program (CREP)**

**CREP Summary and Options**

The Conservation Reserve Enhancement Program (CREP) is a partnership between the Farm Service Agency (FSA) and Washington State through the Washington Conservation Commission (WCC) and Conservation Districts. The program is designed to adapt FSA's Conservation Reserve Program to address local priorities, in this case salmonid habitat. The program primarily focuses on placing forest riparian buffers on salmon and steelhead bearing streams, although in recent years other practices have been added, such as buffers for wetlands with a hydrological connection to fish bearing streams. CREP is a voluntary, incentive-based program that encourages owners and operators of agricultural lands to enhance the riparian areas in their operations.

To date 1,113 contract have been enrolled in CREP. These contracts, which are predominantly riparian buffers, cover 13,879 acres and provide treatment on approximately 800 miles of stream. The average buffer width is 142 feet. The buffers are planted to native trees and shrubs suited for the site.

Under CREP, landowners and producers can receive a signup bonus, cost shares that cover 100% of the eligible installation costs, free maintenance for the first 5 years of the contract, and annual payments equal to approximately 200% of the rental rate for the soils on the enrolled acreage. CREP contracts are 10-15 years in length and the land can be re-enrolled at contract expiration if all eligibility requirements are met. All forms of agricultural production are prohibited on enrolled land. In addition to establishing the forested buffers, cost sharing assistance is also provided to existing livestock operations for fencing and off-stream water developments.

Currently, all benefits are paid for with FSA or WCC funds. However, there is the potential for other parties to join the CREP partnership and provide incentives to encourage enrollment. Partners could include other federal or state entities, tribes, or non-governmental organizations. Benefits could be structured in a number of ways, such as sign up incentives, increased rental payments, easement purchases, increased payments for wider buffers, or "cumulative impact bonuses" (where additional payments are earned when larger, contiguous sections of stream are enrolled). Coordination of these added benefits, including confirmation that participants have met all requirements, could be provided by FSA and WCC, and funds could be administered by the contributing entity or WCC.

Changes to the program such as contributions by new partners would require an amendment to the existing CREP Agreement and approval by FSA and WCC.